IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Dalveer Singh & Others Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO.745/2002)

2. Dalveer Singh & Others Vs. State of Rajasthan
(D.B. CRIMINAL JAIL APPEAL NO.0464/2003)

D. B. Criminal Appeals under Sec.374 (2) Cr.P.C. against the judgment dated 5-6-2002 in Sessions Case No.97/2001 passed by Sh. Iduddin, RHJS, Additional Sessions Judge (Fast Track) No.1, Bharatpur.

Date of Judgment: November 14, 2006.

PRESENT
HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE CHATRA RAM JAT

Mr. Nawab Ali Rathore] for the appellants.
Mr. C.P.Meena]

Mr. R.P.Kuldeep, Public Prosecutor for the State.
Mr. Kamlendra Sihag, for the complainant.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Dalveer Singh, Vijay Singh and Arjun, the appellants herein, along with Mukesh were put to trial before learned Additional Sessions Judge (Fast Track) No.1 Bharatpur, who vide judgment dated June 5, 2002 convicted and sentenced the appellants as under:-

Dalveer Singh, Vijay Singh and Arjun:
U/s.302 IPC:
Each to suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer simple imprisonment for two months.

U/s.394 IPC:
Each to suffer imprisonment for seven years and fine of Rs.500/-, in default to further suffer simple imprisonment for one month.

The substantive sentences were ordered to run concurrently.

2. It is the prosecution case that informant Lal Singh (Pw.1) on August 3, 1999 submitted a written report at Police Station Udhyog Nagar, Bharatpur stating therein that on July 30, 1999 his driver Mohkam Singh proceeded to Mathura Mandi on Tractor No. RJ-5/R6404 around 3 PM for selling 62 bags of mustard and 9 bags of grain. When Lal Singh reached Mathura Mandi in the morning of July 31, 1999 he came to know that Mohakam did not reach there. Lal Singh then went to the village of Mohakam but Mohakam did not reach his village too. Since Mohakam appeared to have misappropriated tractor trolly and crops, action be initiated against him. On that report a case under section 406 IPC was registered and investigation commenced. During investigation it was revealed by Satish and Mahaveer that in the tractor of Mohakam 5-6 persons also got alighted at village Rareh and had gone to Mathura. It was also found that Dalveer Sngh and Vijay Singh sold the crop of mustard and grain to one Tejveer. Dalveer Singh and Vijay Singh were brought to Police Station Raya where they confessed that they committed murder of Mohakam Singh and sold his crop. The accused were arrested. Dead body of Mohakam Singh got recovered and subjected to autopsy. Necessary memos were drawn and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.1 Bharatpur. Charges under sections 302, 394, 364A and 120B IPC were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 27 witnesses. In the explanation under Sec.313 CrPC, the accused claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein

above.

3. We have heard the contentions raised before us and with the assistance of learned counsel perused the record.

4. As per post mortem report (Ex.P-19) the position of skeleton was found as under:-

> 1. Both upper limbs were found separated united with scapula both sides with both humurous bone and both radius ulna found intact. The bones of both hands below wrist found missing.
> 2. In one position the skull and cervical upon 3rd vertebra found intact. Bones missing of lower jaw.
> 3. The bone 4th cervical vertebra to 7th bone found separated.
> 4. The thoracic vertebra with skeleton thorax & upto sacrum vertebra found mis another part found intact.
> 5. In another review pelvic, tibia and fibula bones found intact. The bones of both sides found missing.

5. In the absence of any any eye witness to prove its case the prosecution relied upon the following circumstances to connect the appellants with the offence alleged against them:-

> (i) Skeleton was of Mohakam Singh.
> (ii) Appellants were last seen in the company of Mohakam Singh.
> (iii) Appellants made confession of their guilt.
> (iv) Recovery of skeleton was effected at the instance of the appellants.

6. Learned trial Judge in the impugned judgment observed that the circumstances established by the prosecution are closely knitted that they are consistent only with the guilt of appellants and are totally inconsistent with their innocence. We have, therefore, to examine as to whether the

inference of guilt of appellants can be drawn on the basis of incriminating facts and circumstances established at the trial.

WHETHER SKELETON WAS OF MOHAKAM SINGH:

7. Learned counsel vociferously canvassed that the prosecution has failed to establish that the skeleton recovered by the investigating officer was of Mohakam Singh. In order to analyse this contention when we examine the material on record we find that as per the evidence of Prahlad Singh IO (Pw.20) appellants had confessed to have committed murder of Tractor driver. On the basis of their disclosure statements Ex.P-23 and Ex.P-24 skeleton got recovered which was identified as of Mohakam Singh by Daulat Ram @ Rajjo (Pw.15). One Safi (Head gear) was found lying near the skeleton that was also identified by Daulat Ram @ Rajjo as belonging to Mohakam.

8. Learned trial court placed reliance on the testimony of Daulat (Pw.15) and held that the skeleton belonged to Mohakam Singh. Having closely scanned the testimony of Daulat we notice that although Daulat is the uncle of Mohakam Singh, they were not residing jointly in one house. When Mohakam Singh proceeded on tractor, Daulat had no occasion to meet him and to see his clothes. Despite the fact that Daulat did not see the clothes worn by Mohakam, he identified the skeleton as of Mohakam only on the basis of trouser and head gear. Daulat in his cross examination stated thus:-

> "यह सही है कि मोखम सिंह की लाश हडिडयों का ढांचा रह गई थी शरीर पर चमडी व मांस भी नहीं थे कीडे पड रहे थे सिर पर बाल भी नहीं थे। उसके हाथ शरीर से अलग थे लेकिन पास में ही थे। यह सही है कि लाश पर अगर पेण्ट व साफी नहीं होती तो हम उसे नहीं पहचान पाते। ... यह

सही है कि इस प्रकार के पेण्ट व साफी बाजार में व अन्य लोगों के पास भी मिल जाते हैं।"

9. The Investigating Officer did not make any attempt to get identify the clothes found on or near the skeleton by informant Lal Singh (Pw.1) who employed Mohakam Singh as Driver on his tractor and who had seen Mohakam Singh proceeding on tractor on July 30, 1999. Lal Singh in his deposition did not give description of the clothes worn by Mohakam Singh on July 30, 1999 while he proceeded on tractor to Mathura Mandi.

10. In Ram Lochan Vs. State of West Bengal (AIR 1963 SC 1074) a skeleton said to have been of the deceased was discovered at the instance of the accused. A question involved was of the identification of skeleton and this rested on three distinct lines of evidence:-

> (i) The statement of the accused to the police under section 27 of the Indian Evidence Act which led to the discovery of the skeleton,
>
> (ii) The identification of the clothes, shoes etc., which were found on or near the skeleton as those which were worn by the deceased at the time he left the house,
>
> (iii) A photograph of the deceased superimposed on the photograph of the skeleton.

In para 9 it was indicated that photograph of skeleton was admissible in evidence under section 9 of the Evidence Act. It was indicated as under:-

> "The question at issue in the case is the identity of the skeleton. That identity could be established by its physical or visual

> examination with reference to any peculiar features in it which would mark it out as belonging to the person whose bones or skeleton it is stated to be. Similarly the size of bones, their angularity of curvature, the prominences or the recessions would be features which on examination and comparison might serve to establish the "identity of a thing" within the meaning of S.9. What we have in the present case is first a photograph of that skull. That the skull would be admissible in evidence for establishing the identity of the deceased was not disputed, and similarly a photograph of that skull. That a photograph of the deceased was admissible in evidence to prove his facial features, where these are facts in issue or relevant facts, is also beyond controversy. Now what PW.18 with the assistance of PW.19 has done is to combine these two. The outlines of the skull which is seen in the superimposed photograph show the nasion prominences, the width of the jaw bones and their shape, the general contours of the cheek bones, the position of the eye cavity and the comparison of these with the contours etc. of the face of the deceased as seen in the photograph serve to prove that features found in the skull and the features in the bones of the face of the deceased are identical or at least not dissimilar. It appears to us that such evidence would clearly be within S.9 of the Evidence Act."

11. The living preserve their identity in the dead by the identifiable material that remains of them. If the whole corps is available, and decomposition has not set in or it has not set in to such an extent as to have obliterated the features, the identity is an easy matter, those who knew the dead while living can swear to his identity. If, however, the corpse is no longer in an identifiable state, identify by features is not possible and the clue may be sought either in the clothes or other objects found with the corpse or what is left of the body or it may be sought from whatever remains are left behind. If a dead body is found, the first thing would be to find out its relatives and friends who can successfully identifying it. If, however, the identity of dead body is untraceable, photograph must be taken of it and

preserved for future identification. SODERMAN in his book on MODERN CRIMINAL INVESTIGATION writes: “All unknown dead bodies should be photographed in the same manner as a criminal i.e. front view and profile. For photographing purpose it is necessary to have the face of the dead person as natural and with as lifelike an expression as possible because of the difficulty encountered by most persons in recognizing a dead relative or friend from a a post-mortem photograph. The eyes are in most cases shut, or if open, they are sunken and covered with a grey film. There is no contrast between the colour of the skin the lips, and finally the rigid, unnatural appearance of the face gives the impression of something unreal. In order to make the face more lifelike, the appearance of the eyes and the lips should be improved. Numerous methods have been proposed for this purpose. Generally a mixture of equal parts of glycerine and water is inserted in the eye-sockets with the aid of a syringe with a fine tip. The eyelids are then raised. The lips are covered with a mixture of carmine in alcohol, which is applied with a small brush. If the body has been submerged in water for a long time and the skin is already partly gone, the face can be given a more natural appearance by powdering it with talcum which is gently massage over the flesh and the remaining skin. Rubber gloves should be used for this purpose.

> “If puterfication is so far advanced that large portions of skin and flesh have disappeared, one may be able to reconstruct the face even in seemingly impossible cases. The puterfication ceases when corrosive sublimate solution is used as an external wash. Plastelina, clay, or cotton fixed with collodion and covered with the proper shade of wax may be used to replace the lost flesh. As the eye-sockets are generally empty, glass eyes are inserted. The missing hair is replaced by a wig, and the face is made to assume its natural colour with make-up.”

12. Charles C. Scott, in his book on photographic Evidence has insisted upon the photographing of the dead in all cases irrespective of previous identification. The learned author writes: Photographs of the corpses of the crime victims and the unknown dead should always be made with the idea of showing how the persons in question looked when alive. From the evidential standpoint, such photographs are invaluable for identification purposes, for even if it were convenient to bring a corpse into the court-room, in most instances the body would be less valuable for identification purposes than a properly taken photograph. This is true because it is often difficult to recognize even an intimate friend by viewing his corpse. The recognition is especially difficult when the face is badly mutilated or partly decomposed. Then, too, the mere fact that the corpse is supine, instead of standing or sitting may impede identification. On the other hand, a good legal portrait of a dead person often may be recognized readily because it stimulates life; the more lifelike it is, the more valuable it is for identification purposes. This work should always be carried out as soon as possible after the body is found. Each stage of decomposition lessens the chances of obtaining a lifelike portrait. Soon after death, it may be possible by skulful photography alone to secure a good likeness but as decomposition progresses, the need for artificial reconstruction of the features may arise.

13. Prahlad Singh I.O. (Pw.20) in his deposition did not state that he made attempt to snap the photograph of the skeleton. He did not even record the statement of Daulat Ram. Prahlad Singh deposed as under:-

"मैंने मोखम के चाचा दौलत राम को नहीं बुलाया था बल्कि वे स्वयं ही मोखम सिंह को तलाश कर रहे थे। इस तफतीश में मृतक मोखम के चाचा दौलत राम से कोई तफतीश नहीं की। मृतक के चाचा दौलत राम का बयान मैंने तफतीश में लेना आवश्यक नहीं समझा।"

14. In the ultimate analysis we find that since Daulat Ram did not see Mohakam Singh on July 30, 1999 when he proceeded on tractor to Mathura Mandi. It was not possible for him to indentify the skeleton as of Mohakam Singh on the basis of clothes found on or near the skeleton. Informant Lal Singh would have been the best witness to identify the clothes worn by Mohakam Singh but he was not shown the trouser and head gear found on or near the skeleton. The photograph of the skeleton could have been admissible in evidence under section 9 of the Evidence Act, but the Investigating Officer failed to collect this evidence. We thus hold that the prosecution has failed to establish beyond reasonable doubt the skeleton was of Mohakam Singh. Learned trial court has not properly appreciated the evidence adduced at the trial and committed illegality in holding that the skeleton was of Mohakam Singh. Since it could not be established that the skeleton was of Mohakam Singh, it is not necessary for us to discuss the other circumstantial evidence adduced at the trial. The prosecution in our opinion failed to prove the charges under section 302 and 394 IPC against the appellants beyond reasonable doubt.

15. For these reasons, we allow the appeals and set aside the impugned judgment. We acquit the appellants Dalveer Singh, Vijay Singh and Arjun of the charges under sections 302 and 394 of the Indian Penal Code. Appellant Dalveer Singh is on bail, he need not surrender and his bail bonds stand discharged. Appellants Vijay Singh and Arjun, who are in jail, shall be set at liberty forthwith, if not required to be detained in any other

case.

(Chatra Ram Jat),J. (Shiv Kumar Sharma)J.

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